

ESTTA Tracking number: **ESTTA449474**Filing date: **01/04/2012**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**Notice of Opposition**

Notice is hereby given that the following party opposes registration of the indicated application.

**Opposer Information**

Name	MerchSource, LLC
Granted to Date of previous extension	01/04/2012
Address	19517 Pauling Foothill Ranch, CA 92610 UNITED STATES
Attorney information	Jennifer H. Hamilton The Eclipse Group LLP 6345 Balboa Blvd., Bldg. II, Suite 325 Encino, CA 91316 UNITED STATES TMDocketing@eclipsegrp.com Phone:(818) 488-8141

**Applicant Information**

Application No	85136701	Publication date	09/06/2011
Opposition Filing Date	01/04/2012	Opposition Period Ends	01/04/2012
Applicant	Elsa Baby Ltd. 1930 Bay Boulevard Atlantic Beach, NY 11509 UNITED STATES		

**Goods/Services Affected by Opposition**


Class 024. First Use: 2010/09/21 First Use In Commerce: 2010/09/21  
All goods and services in the class are opposed, namely: blankets, namely, pet blankets and bed pads

**Grounds for Opposition**

Priority and likelihood of confusion	Trademark Act section 2(d)
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**Mark Cited by Opposer as Basis for Opposition**

U.S. Registration No.	4075973	Application Date	08/04/2010
Registration Date	12/27/2011	Foreign Priority Date	NONE
Word Mark	PET'S PAD		

Design Mark	
Description of Mark	The mark consists of a dog standing facing the right with a cat sitting to the right of the dog also facing the right and the words "PET'S PAD" underneath the dog and cat.
Goods/Services	<p>Class 018. First use: First Use: 2010/01/31 First Use In Commerce: 2010/01/31 Pet products, namely, pet restraining devices consisting of pet leashes with locking devices</p> <p>Class 020. First use: First Use: 2010/01/31 First Use In Commerce: 2010/01/31 Pet beds; portable pet beds; non-metal portable stairs for use by pets; non-metal pet kennels in the form of a tent or house</p> <p>Class 021. First use: First Use: 2010/01/31 First Use In Commerce: 2010/01/31 Pet feeding and drinking bowls</p> <p>Class 024. First use: First Use: 2010/01/31 First Use In Commerce: 2010/01/31 Pet blankets</p>

Attachments	85100062#TMSN.jpeg ( 1 page )( bytes ) MS12OPP001_2012-01-04_Notice_of_Opposition.pdf ( 5 pages )(339257 bytes )
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### Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Jennifer H. Hamilton/
Name	Jennifer H. Hamilton
Date	01/04/2012

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

<b>MerchSource, LLC</b>	)	
	)	
<b>Opposer</b>	)	<b>Opposition No.</b>
	)	
<b>v.</b>	)	<b>Mark: PETPADSTERS</b>
	)	
<b>Elsa Baby Ltd.</b>	)	<b>Serial No. 85/136,701</b>
	)	
<b>Applicant</b>	)	
	)	

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**NOTICE OF OPPOSITION**

Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451

Dear Sir/Madam:

Opposer MerchSource, LLC is a Delaware limited liability company residing at 19517 Pauling, Foothill Ranch, CA 92610. To the best of Opposer's knowledge, the name and address of the current owner of the above-identified application is Elsa Baby Ltd., a New York corporation, residing at 1930 Bay Boulevard, Atlantic Beach, New York.

Opposer believes that it is and will be damaged by registration of the above-identified application, and hereby opposes the same.

The grounds for opposition are as follows:

1. Opposer is a leading designer, marketer and distributor of consumer products to the retail sector. Among these consumer products, Opposer offers multiple pet products, such as

pet blankets, pet beds, portable pet beds, portable stairs for pets, pet kennels, pet feeding and drinking bowls, and pet restraining devices.

2. Opposer is the owner of US Registration No. 4,075,973 for the mark PET'S PAD and Design, with a filing date of August 4, 2010, for *inter alia* pet blankets in International Class 24 and pet beds and portable pet beds in International Class 20. Opposer also has common law rights in the mark based on its use of the mark in connection with the goods identified in the trademark registration since at least as early as January 31, 2010 (copy attached).

3. Applicant filed an application for its proposed mark PETPADSTERS, US Serial No. 85/136,701, in International Class 24 for "blankets, namely, pet blankets and bed pads." Applicant's application is based on its alleged actual use of the mark. Applicant submitted an alleged specimen with its application showing its proposed mark on the product packaging of a "protective pet pad." Applicant's date of filing is September 23, 2010, which is subsequent to Opposer's filing date of August 4, 2010.

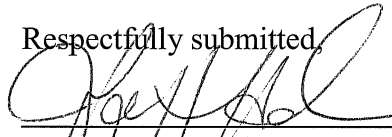
4. Due to Opposer's marketing efforts, the goods associated with PET'S PAD and Design are well known and widely recognized by consumers and third parties in various consumer retail stores, such as Ace Hardware and Amazon.com.

5. Applicant is not entitled to registration of the proposed mark PETPADSTERS on the grounds that, pursuant to § 2(d) of the Trademark Act, Applicant's mark may be likely to cause mistake, confusion or deception with Opposer's Mark and its common law rights based on the similarity of Opposer's and Applicant's marks, the relatedness of goods offered under the parties' respective marks, and the similarity of trade channels and conditions of sale.

WHEREFORE, Opposer MerchSource requests that this Notice of Opposition be granted in its favor, and that Applicant's mark PETPADSTERS, US Application Serial No. 85/136,701, be denied registration on the Principal or Supplemental Register.

Dated: 1/4/12

Respectfully submitted,



Jennifer H. Hamilton

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ATTORNEYS FOR OPPOSER

# United States of America

United States Patent and Trademark Office



**Reg. No. 4,075,973**

**Registered Dec. 27, 2011**

**Int. Cls.: 18, 20, 21 and 24**

**TRADEMARK**

**PRINCIPAL REGISTER**

MERCHSOURCE, LLC (CALIFORNIA LIMITED LIABILITY COMPANY)  
19517 PAULING  
FOOTHILL RANCH, CA 92610

FOR: PET PRODUCTS, NAMELY, PET RESTRAINING DEVICES CONSISTING OF PET LEASHES WITH LOCKING DEVICES, IN CLASS 18 (U.S. CLS. 1, 2, 3, 22 AND 41).

FIRST USE 1-31-2010; IN COMMERCE 1-31-2010.

FOR: PET BEDS; PORTABLE PET BEDS; NON-METAL PORTABLE STAIRS FOR USE BY PETS; NON-METAL PET KENNELS IN THE FORM OF A TENT OR HOUSE, IN CLASS 20 (U.S. CLS. 2, 13, 22, 25, 32 AND 50).

FIRST USE 1-31-2010; IN COMMERCE 1-31-2010.

FOR: PET FEEDING AND DRINKING BOWLS, IN CLASS 21 (U.S. CLS. 2, 13, 23, 29, 30, 33, 40 AND 50).

FIRST USE 1-31-2010; IN COMMERCE 1-31-2010.

FOR: PET BLANKETS, IN CLASS 24 (U.S. CLS. 42 AND 50).

FIRST USE 1-31-2010; IN COMMERCE 1-31-2010.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "PET'S", APART FROM THE MARK AS SHOWN.

THE MARK CONSISTS OF A DOG STANDING FACING THE RIGHT WITH A CAT SITTING TO THE RIGHT OF THE DOG ALSO FACING THE RIGHT AND THE WORDS "PET'S PAD" UNDERNEATH THE DOG AND CAT.

SER. NO. 85-100,062, FILED 8-4-2010.

KYLE PEETE, EXAMINING ATTORNEY



*David J. Kappas*

Director of the United States Patent and Trademark Office

**CERTIFICATE OF SERVICE**

It is hereby certified that a true copy of the foregoing **NOTICE OF OPPOSITION** was mailed, first class, postage prepaid this 4<sup>th</sup> day of January 4, 2012, to the following attorneys for Applicant:

Amy B. Goldsmith  
Gottlieb, Rackman & Reisman, P.C.  
270 Madison Ave., Fl. 8  
New York, NY 10016-0601

By

  
Diane Gilden